

ROCKWOOD & NOZISKA, L.L.P.
NEAL H. ROCKWOOD, ESQ. SB# 106197
C. BRANT NOZISKA, ESQ. SB#106117
CHARLES L. FANNING IV, ESQ. SB#248704
5060 North Harbor Drive, Suite 255
San Diego, California 92106
Phone: (619) 224-7778 Fax (619) 224-7779

Attorneys for Plaintiffs,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

1800 SOUTH MAPLE STREET, LLC, a
California Limited Liability Company;
RALPH J. GIANNELLA, an individual;
GIANNELLA PROPERTIES, INC., a
California Corporation; WILLIAM G.
AYYAD, an individual; WILLIAM G.
AYYAD, INC., a California Corporation; and
PREMIER COMMUNITIES, LLC, a
California Limited Liability Company.

Plaintiffs,

v.

ALLIED PROPERTY AND CASUALTY
INSURANCE COMPANY, an Iowa
Corporation; AMCO INSURANCE
COMPANY, an Iowa Corporation;
NATIONWIDE MUTUAL INSURANCE
COMPANY, an Ohio Corporation, and DOES
1 through 100, inclusive,

Defendants.

CASE NO. 07-CV-2030

**PLAINTIFFS' *EX PARTE* APPLICATION
REQUESTING A STAY OF THIS
MATTER PENDING RESOLUTION OF
PLAINTIFFS' MOTION TO AMEND
THEIR COMPLAINT**

Magistrate Judge: Hon. Nita L. Stormes
Room: 1118

Action Filed: September 10, 2007
Trial Date: TBA

///

///

///

///

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs, 1800 SOUTH MAPLE STREET, LLC, a California limited liability company; RALPH J. GIANNELLA, an individual; GIANNELLA PROPERTIES, INC., a California corporation; WILLIAM G. AYYAD, an individual; WILLIAM G. AYYAD, INC., a California corporation; and PREMIER COMMUNITIES, LLC, a California Limited Liability Company (hereinafter "Plaintiffs"), hereby move this Court, ex parte, for a stay of this matter in light of the hearing scheduled on February 29, 2008, regarding Plaintiffs' motion to amend their complaint which if successful would result in the remand of this action back to San Diego Superior Court.

1. Plaintiffs Respectfully Request this Court Stay this Matter in Light of Plaintiffs' Hearing on February 29, 2008, Regarding Their Motion to Amend Their Complaint.

The order following the early neutral evaluation conference, dated January 10, 2008, set forth the dates for the following sequence of events: 1) Rule 26(f) Conference is set for the 6th of February; 2) The joint discovery plan is to be lodged on the 15th of February; 3) Initial disclosures pursuant to Rule 26(a)(1)(A-D) are to be lodged on the 22nd of February; and 4) The Case Management Conference is set for the 7th of March. (Exhibit "A").

At the hearing scheduled for February 29, 2008, Plaintiffs are seeking to amend their complaint and join an additional defendant Michael Ehrenfeld Company-Insurance Agents and Brokers (hereinafter "Michael Ehrenfeld Company"), which will destroy diversity of citizenship and remand the matter to State Court. The AMCO Policy No. ACP BPH 7801069841 was procured by broker and AMCO agent, Michael Ehrenfeld Company, who has worked with Plaintiffs for many years and was knowledgeable of Plaintiffs' business activities. In AMCO INSURANCE COMPANY'S (hereinafter "AMCO") March 3, 2006 denial letter AMCO accused its insureds of fraud on the application and threatened an action for rescission of the AMCO Policy insurance contract. (Exhibit "B"). In AMCO's correspondence dated January 15, 2008 AMCO maintained its refusal of coverage. (Exhibit "C"). As a result of AMCO's

continued denial of coverage under the AMCO Policy, Plaintiffs are left with no choice but to assert a cause of action against the broker Michael Ehrenfeld Company for professional negligence in procuring insurance coverage for Plaintiffs. Assuming no coverage exists as AMCO argues, then AMCO's appointed agent Michael Ehrenfeld Company must necessarily be liable for negligence in failing to procure adequate insurance for Plaintiffs. Given Plaintiffs' interest in securing a remedy for lack of coverage and Michael Ehrenfeld Company's interwoven role in the disputed facts of the case as broker and AMCO agent, it is imperative that Plaintiffs amend their complaint joining Michael Ehrenfeld as a Defendant with a cause of action for professional negligence. By joining Michael Ehrenfeld Company, who is an indispensable party as a result of AMCO's denial, subject matter jurisdiction will be destroyed and the action would effectively be remanded to the State Court. 28 U.S.C.A. 1447(e).

Plaintiffs have notified opposing counsel that Michael Ehrenfeld Company would be added as an additional defendant in correspondence dated January 15, 2008. Plaintiffs' letter stated the following:

"Without an admission of coverage by AMCO, Plaintiffs will have no choice but to move to amend the complaint to add AMCO agent Michael Ehrenfeld Company as a defendant. In doing so, Plaintiffs will assert a cause of action for professional negligence on the part of this prospective defendant. As Honorable Judge Stormes acknowledged, this will destroy diversity of citizenship and the case will be remanded to Honorable Judge Prager's department in the San Diego Superior Court." (Exhibit "D").

Plaintiffs are well aware of the importance of and the efficiency created by events such as the Rule 26(f) Conference and the Case Management Conference. Out of concern for efficiency Plaintiffs seek a stay of this matter pending resolution of Plaintiffs' motion to amend their complaint. Having the case remanded to State Court in the middle of the sequence of events set forth in the Order dated January 10, 2008, would result in judicial inefficiency. Plaintiffs request the Court place a stay on these dates and all further procedural requirements which will allow the hearing on February 29, 2008 to be heard and a ruling to be reached in order to determine whether this case will remain in Federal Court.

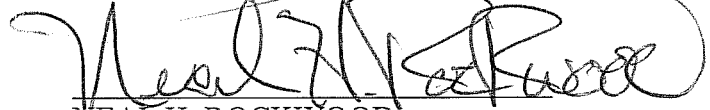
///

CONCLUSION

Plaintiffs respectfully request the Court grant a stay on this matter pending a ruling on the hearing scheduled for February 28, 2008.

DATE: January 28, 2008

ROCKWOOD & NOZISKA, LLP



NEAL H. ROCKWOOD
C. BRANT NOZISKA
CHARLES L. FANNING IV
Attorneys for Plaintiffs

ROCKWOOD & NOZISKA, LLP
5060 North Harbor Drive, Suite 255
San Diego, California 92106
(619) 224-7778 FAX (619) 224-7779